

Message Text

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ACDA-19 CIAE-00 DODE-00 PM-07 INR-10 L-03 NSAE-00

NASA-04 NSC-07 SCI-06 SS-20 SP-03 OIC-04 PA-04 SAM-01

PRS-01 USIA-15 DRC-01 CCO-00 OTPE-00 EB-11 FCC-03

OC-06 COME-00 /217 W

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TO SECSTATE WASHDC 5678

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E.O. 11652: N/A

TAGS: TSPA, PFOR, UN

SUBJECT: OUTER SPACE LEGAL SUBCOMMITTEE (OSLS):

GENERAL DEBATE MAY 9-10

1. SUMMARY. OSLS CONTINUED AND CONCLUDED GENERAL DEBATE MAY 9-10. STATEMENTS INDICATED CONTINUING STRONG DIVERGENCIES ON NATURAL RESOURCES ISSUE IN MOON TREATY AND DIRECT BROADCASTING, TOGETHER WITH POSSIBLE READINESS TO COMPROMISE ON VOLUNTARY MARKING PROVISION IN REGISTRATION TREATY.

2. DETAILS. MOON TREATY: (A) SCOPE. MOST DELS ADDRESSING ISSUE EXPRESSLY OR IMPLICITLY SUPPORTED EXPANDING TREATY SCOPE TO COVER CELESTIAL BODIES (CBS) OF SOLAR SYSTEM. MANY, HOWEVER, ACCEPTED FORMULATION ALONG LINES OF UK 1973 PROPOSAL TO EFFECT THAT TREATY PROVISIONS WOULD COVER CBS BESIDES MOON ONLY UNTIL SEPARATE TREATY RULES AGREED FOR SPECIFIC CBS. UK REP, HOWEVER, STATED MAY 10 HIS DEL "NOT TIED" TO LIMITED OFFICIAL USE

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ITS OWN PROPOSAL AND RECEPTIVE TO ANY SUGGESTED

CHANGE WHICH MIGHT REFLECT EXPANDED SCOPE IN GENERALLY ACCEPTABLE WAY. (COMMENT: WE HAVE POINTED OUT PRIVATELY TO NUMBER OF DELS UNDESIRABILITY OF MULTIPLICITY OF SEPARATE CB TREATIES, WITH SOME RECEPTIVITY ON THEIR PART. WE EXPECT TO MAKE POINT AT APPROPRIATE JUNCTURE IN MOON TREATY WORKING GROUP NEXT WEEK.)

(B) TIMING OF INFORMATION ON MISSIONS (ADVANCE NOTIFICATION): FEW DELS ADDRESSED THIS ISSUE. HOWEVER, IN CONNECTION WITH STRONG STATEMENT ON NEED TO PRESERVE LUNAR ENVIRONMENT FROM "ERRORS OF POLLUTION WE HAVE MADE ON EARTH," JAPAN STRESSED POSSIBILITY IT WOULD BE TOO LATE TO TAKE EFFECTIVE MEASURES TO PREVENT DISRUPTION OF LUNAR ENVIRONMENT IF NOTIFICATION OF MOON MISSIONS GIVEN ONLY AFTER LAUNCHING.

(C) EXPLOITATION OF NATURAL RESOURCES: MOST CONTENTIOUS MOON TREATY ISSUE REMAINS "COMMON HERITAGE" QUESTION. USSR EFFORT TO ESCAPE IMPASSE BY SUBSTITUTING PROVISION THAT LUNAR, ETC, RESOURCES SUBJECT TO "COMMON USE" APPEARS TO HAVE FAILED ALREADY. MOST DELS ADDRESSING SUBJECT CALLED RESOURCES ISSUE MOST IMPORTANT TO THEM IN MOON TREATY. PREVIOUS STRONG ADVOCATES OF "COMMON HERITAGE," E.G., LATIN AMERICANS, INDIA, EGYPT, WERE UNBENDING, WHILE USSR AND ALLIES PLUS JAPAN INDICATED CONCEPT REMAINS UNACCEPTABLE.

(D) LINKAGE OF CELESTIAL BODY AND DEEP SEA REASOURCES: BOTH ARGENTING (COCCA) AND MEXICO (VALLARTA) EXPLICITLY LINKED "COMMON HERITAGE" CONCEPT RE LUNAR, ETC., RESOURCES TO SEABEDS AND LAW OF SEA CONFERENCE. COCCA SAID "COMMON HERITAGE" WAS OF PARAMOUNT IMPORTANCE IN MOON TREATY. VALLARTA, IN MOST EXTENSIVE EXEGESIS YET PROPOUNDED IN OSC OF ALLEGED LINKAGE BETWEEN SPACE AND MARINE RESOURCES, CITED PARDO OF MALTA AND PRESIDENT JOHNSON TO EFFECT THAT LATTER CONSTITUTE COMMON HERITAGE OF MANKIND AND SAID MOON AND ITS RESOURCES ARE SAME. VALLARTA ALSO ASSERTED THAT TRADITIONAL CIVIL LAW CONCEPT OF "COMMON PATRIMONY" (WHICH IS WAY "COMMON HERITAGE" IS TRANSLATED INTO SPANISH AND FRENCH) HAS PRECISE LEGAL CONTENT: THE TOTALITY OF A PERSON'S GOODS. "COMMON HERITAGE," VALLARTA CONCLUDED, HAS TAKEN ON STRONG SIGNIFICANCE FOR MANY COUNTRIES IN VIEW OF LIMITED OFFICIAL USE

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THEIR SEABEDS INTERESTS AND CONCERNS. NIGERIA LATER REINFORCED THIS POINT.

(C) COMMENT: AT LUNCH MAY 10 BRAZILIAN REP INDICATED PESSIMISM OVER POSSIBILITY OF AGREEMENT ON MOON TREATY AT CURRENT OSLS SESSION, PRIMARILY BECAUSE OF RESOURCES ISSUE. OBSERVING THAT IN MANY DELS' EYES TREATY DID NOT REALLY MATTER TO ANYONE BESIDES MAJOR SPACE POWERS, BRAZILIAN SAID HIS COUNTRY AT LEAST WAS CONCERNED OVER

OUTCOME ON RESOURCES QUESTION BECAUSE OF POSSIBLE PRECEDENT FOR "OTHER AREAS" (I.E., SEABEDS). BRAZILIAN ADDED HIS "STRONG PERSONAL IMPRESSION" THAT USSR DEL CARED MUCH LESS THAN BEFORE ABOUT FINISHING TREATY SINCE IT WANTED URGENTLY TO GET AT DBS.

3. REGISTRATION: (A) MARKING. MANY DELS, WITH VARYING DEGREES OF RESIGNATION, INDICATED THEY WOULD AT LEAST CONSIDER CANADAIAN COMPROMISE PROPOSAL FOR VOLUNTARY MARKING ALTHOUGH THEY HAD STRONGLY PREFERRED COMPULSORY PROVISION. AMONG PREVIOUSLY STRONGEST PROPONENTS OF MANDATORY MARKING, E.G., LAS AND INDIA, NONE TOOK WHOLLY IN-TRANSIGENT POSITION. ARGENTINA CAME CLOSEST, ASSERTING THAT MARKING "CECOMES OBLIGATORY" BECUASE OF LIABILITY CONVENTION. INDIA INDICATED THAT ITS INSTRUCTIONS CALLED FOR COMPULSORY MARKING BUT IT HAD ASKED DELHI FOR REAPPRAISAL. BOTH BRAZIL AND MEXICO SPECIFICALLY AGREED THAT TECHNICAL-ECONOMIC FACTORS AGAINST COMPULSORY MARKING CITED BY SPACE POWERS SHOULD BE GIVEN SUBSTANTIAL WEIGHT. NIGERIA ON OTHER HAND SAID MANDATORY MARKING SYSTEM SHOULD BE ACCEPTED.

(B) COMMENT: CANADIAN REP TOLD US MAY 9 THAT NON-ALLIGNED CAUCUS HAD AGREED TO SEEK NEW INSTRUCTIONS, WHERE NEEDED, FROM CAPITALS WITH VIEW TO PRESENTING COLLECTIVE REACTION TO CANADIAN MARKING PROPOSAL (WHICH OF COURSE IS ACCEPTABLE TO US). MAY 13. BRAZI
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4. DBS: PREDICTABLY, VIEWS VARIED WIDELY. HOWEVER, MANY DELS AGREED THAT DBS WORKING GROUP REPORT REFLECTED AREA OF COMMON ACCORD WHICH OFFERED BASIS FOR OSLS TO PROCEED TOWARD AGREEMENT ON SOME PRINCIPLES. DIFFERENCES CENTERED ON PRIOR CONSENT QUESTION, WITH UK AND ESPECIALLY JAPAN OPPOSING SUCH A PRINCIPLE. ACCORDING TO JAPANESE RE, IF RECEIVING STATE PRIOR CONSENT BECAME CONDITION FOR DIRECT TV BROADCASTING, SUCH BROADCASTS "COULD BE FORECLOSED OR HAMPERED BY UNILATERAL WILL OF EACH RECEIVING STATE." SIMILARLY, HE ADDED, JAPAN COULD NOT SUPPORT CONCEPT OF "PARTICIPATION" BY RECEIVING STATE AS MATTER OF RIGHT. BELGIUM USGGESTED THAT SOULTION OF TECHNICAL PROBLEMS, E.G., SPILLOVER, SHOULD HELP WITH LEGAL PROBLEMS. ON OTHER SIDE EGYPT AMONG OTHERS RELATED PRIOR CONSENT TO RECEIVING STATE'S SOVEREIGN RIGHTS. ALTHOUGH MOST DELS SEEMED TO ACCEPT PRINCIPLES AS OBJECTIVE OF CURRENT OSLS EFFORTS, ARGENTINA ANNOUNCED IT WOULD PRESENT DRAFT TREATY TO SUBCOMMITTEE AT THIS SESSION.

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4. REMOTE SENSING: AGAIN, DELS EXPRESSED HIGHLY DISPARATE VIEWS. (A) UK SAW NO NEED FOR INTERNATIONAL INSTRUMENT ON ERS, ASSERTING THAT INTERNATIONAL LAW IMPOSES NO LIMITATION ON SENSING FROM OUTER SPACE OR DISSEMINATION OF DATA THUS DERIVED. JAPAN AGREED, STATING THAT UNDER ITS INTERPRETATION OF INTERNATIONAL LAW NEIGHER REMOTE SENSING ITSELF NOR ANALYSIS OR UTILIZATION OF DATA "CAN POSSIBLY CONSTITUTE VIOLATION" OF SENSED STATE'S SOVEREIGNTY. NEVERTHELESS, JAPAN SAW "INEVITABLE POLITICAL IMPLICATIONS" IN DATA DISSEMINATION TO THIRD COUNTRIES AND THOUGHT "SOME SORT OF MEASURES FOR INTERNATIONAL ADJUSTMENT" WOULD HAVE TO BE EXPLORED IN FUTURE, TAKING ESPECIALLY INTO ACCOUNT IMPORTANCE OF EQUITABLE BALANCE BETWEEN POTENTIAL BENEFITS TO REGION OF OPTIMUM UTILIZATION OF ERS DATA AND SOVEREIGN RIGHTS OF INDIVIDUAL STATES TO BLCK SUCH UTILIZATION.

(B) ON OTHER SIDE, BRAZIL EXPLAINED ITS DRAFT TREATY AS BASED ON OVERRIDING CONCERN FOR BALANCE BETWEEN RESPECT FOR SOVEREIGN RIGHTS AND TECHNICAL AND SCIENTIFIC PURPOSES THAT COULD BE SERVED BY ERS. MAIN POINTS OF DRAFT TREATY, ACCORDING TO BRAZILIAN REP, INCLUDED: (1) CONSENT BY SENSED STATE; (2) RIGHT TO PARTICIPATE IN REMOTE SENSING ACTIVITIES; (3) FULL AND UNRESTRICTED ACCESS TO DATA BY SENSED STATES; (4) EXPRESS SENSED STATE AUTHORIZATION FOR DATA DISTRIBUTION; (5) INTERNATIONAL ACCESS TO DATA; (6) STATE RESPONSIBILITY FOR REMOTE SENSING ACTIVITIES; (7) PEACEFUL SETTLEMENT FO SIDPUTES, HOWEVER, WITH SELF-

PROTECTION RIGHTS UNDER INTERNATIONAL LAW.

(C). IN MOST EXTREME ADVOCACY OF ERS RESTRICTIONS
ROMANIA CALLED FOR PRIOR SENSED STATE CONSENT TO BOTH
ACQUISITION AND DISSEMINATION AND EXPLICIT REGISTRA-
TION AS SUCH OF ALL SATELLITES ENGAGED IN REMOTE SENSING.

6. US STATEMENT WAS LARGELY CONFINED TO OVERVIEW OF
HISTORY AND RECORD OF ACHIEVEMENTS OF OSC AND ITS
SUBSIDIARIES, IN PARTICULAR OSLS, WITH CONSIDERABLE
STRESS ON COOPERATIVE RELATIONSHIP AMONG MEMBERS AND
BENEFITS OF OPERATION BY CONSENSUS. THIS SEEMED INDDICATED
APRTICULARLY SINCE MEXICAN REP CALLED FOR CAUCUS OF
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"GROUP OF 77" MEMBERS FOR THIRD TIME IN CURRENT OSLS
SESSION. (WE HAD QUESTIONED BRAZILIAN REGARDING THIS
APPROACH IN LOW KEY; HE REPLIED MERELY THAT "IT WAS
IMPORTANT PERSONALLY" TO VALARTA WHO HAD BEEN PROMI-
NENT IN GROUP OF 77 DELIBERATIONS ON LAW OF THE SEA
MATTERS.)

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